

Message Text

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 591

INFO AMEMBASSY ISLAMABAD

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

C O N F I D E N T I A L NEW DELHI 10916

E.O. 11652: GDS

TAGS: PINT, IN

SUBJ: MRS. GANDHI'S SUPREME COURT CASE

REF: NEW DELHI 10851

1. THE SUPREME COURT'S AUGUST 11 DECISION TO CONSIDER ARGUMENTS AGAINST THE VALIDITY OF THDATHIRTY-NINTH CONSTITUTIONAL AMENDMENT CONSTITUTES AN IRRITANT BUT NOT A SETBACK TO MRS. GANDHI. THE PRIME MINISTER'S STATEMENTS AND ACTIONS SINCE THE EMERGENCY CZ-DICATE THAT SHE IS DETERMINED TO TAY IN POWER AND WILL TAKE THE STEPS NECESSARY TO DO SO--PREFERABLY IN A CONSTITUTIONAL FRAMEWORK.

2. IN ACCEPTING THE PRESENT CONSTITUTIONAL FRAMEWORK, MRS. GANDHI WOULD APPEAR TO FACE TWO GENERAL ALTERNATIVES:

(A) AWAIT THE COURT'S JUDGMENT ON BHUSHAN'S CONTENTION. THIS COULD TAKE ANYWHERE FROM TWO WEEKS TO SEVERAL MONTHS, AND MIGHS INVOLVE CALLING A FULL SUPREME COURT BENCH. IT MIGHT ALSO PROVIDE THE COURT WITH AN OPPORTUNITY TO EXPRESS ITSELF ON MRS. GANDHI'S RECENT EFFORTS TO CHIP AWAY AT THE JUDICIARY'S JURISDICTION

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THROUGH CONSTITUTIONAL AMENDMENTS. AS STATED REFTTEL, WE THINK IT

HIGHLY UNLIKELY THAT THE COURT WILL ACCEPT B BSHAN'S ARGUMENTS;

(B) CHANGE THE PRESENT PARLIAMENT INTO A CONSTITUENT ASSEMBLY AND ADOPT A NEW CONSTITUTION. (IN THE WELL KNOWN 1967 GOGAKNATH CAUSE, THE MAJORITY OF THE JUDGES HELD THAT A CONSTITUENT ASSEMBLY COULD BE CREATED BY PARL

MENT THROUGH ENACTMENT OF A LAW
UNDAG THE RESIDUARY POWERS GRANTED TO THE UNION UNDER THE CONSTITUTION.) A NEW CONSTITUTION COULD NEGATE THE SUPREME COURT CASE.

3. ATTORNEY GENERAL DE'S AUGUST 11 STATEMENT ENCOURAGING THE COURT TO DECIDE ON BHUSHAN'S CONTENTION "SO THAT PARLIAMENT KNOWS WHERE IT STANDS" INDICATED THAT THE PRIME MINISTER LEANS TOWARD OPTION NW
(
A). A POSSIBLE SENSE OF INSECURITY ARISING OUT OF THE COURT'S AUGUST 11 EXPRESSION OF INDEPENDENCE AND PROSPECTS FOR HER CASE TO LINGER ON ARE THE ASSURES WORKING FOR OPTION (B).
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